

## AGREEMENT FOR DISPOSAL OF WASTE MATERIALS CONTRACT 201109718

This Agreement is entered into this 11th day of July, 2011 by and between Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a home rule city and Colorado Municipal Corporation ("UTILITIES") and Veolia ES Technical Solutions, LLC, a, Arizona corporation, whose principal place of business is 5736 W. Jefferson Street, Phoenix, AZ 85043, as an independent contractor ("CONTRACTOR").

### RECITALS

A. Through its many operations UTILITIES routinely generates a variety of waste materials. Many of these waste materials must be sent to off-site, privately owned, and operated facilities for storage, treatment, disposal, recycling, and/or reclamation.

B. CONTRACTOR has facilities and the ability to transport, treat, store, dispose of and recycle UTILITIES' waste materials in a lawful manner. UTILITIES desires for CONTRACTOR to provide environmentally responsible and reliable transportation, storage, treatment, disposal, recycling, and/or reclamation of waste materials generated at UTILITIES' facilities.

### AGREEMENT

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Services. Seller agrees to provide the following services to UTILITIES: UTILITIES requires service to provide environmentally responsible and reliable transportation and disposal of hazardous waste and other solid waste on an as needed basis per the attached Exhibit A Statement of Work. This is not an exclusive Agreement. UTILITIES does not guarantee that a specific amount of Services will be requested to be provided by CONTRACTOR. UTILITIES reserves the right to utilize its own staff or other contractors to provide the Services.

2. Compensation. In consideration for the Services performed, UTILITIES agrees to compensate CONTRACTOR as follows: Per Exhibit B.

3. Term. The terms of this Agreement shall commence on the 11th day of July, 2011 and shall terminate on the 10<sup>th</sup> day of July, 2012 unless earlier terminated under this Agreement or otherwise agreed to in writing by the parties. This Agreement shall be subject to four (4) one year renewal options at the sole discretion of UTILITIES.

4. Contractor's Responsibilities.

- (a) CONTRACTOR shall be knowledgeable and experienced in waste material collection systems, planning, regulatory compliance, and permitting relating to the management and disposal of waste materials.
- (b) CONTRACTOR shall procure and maintain at its expense all registrations, licenses and permits necessary for the performance of the Services, including but not limited to those required by EPA, CDPHE, DOT, and EPCDHE, for the transportation, storage, treatment, recycling, disposal, and/or reclamation of waste materials generated at various UTILITIES facilities. CONTRACTOR shall be in compliance with all applicable registration, license, and permit requirements at all times.
- (c) CONTRACTOR shall observe and comply with all applicable laws, regulations, ordinances, executive orders and directives of any government entity that has jurisdiction over the Services, including without limitation EPA, CDPHE, OSHA, DOT, and the EPCDHE.
- (d) CONTRACTOR shall furnish all labor, equipment, materials, supplies, tools, supervision, and all other items incidental thereto and perform all services necessary and specified in the prescribed manner to provide and complete the Services. Such services, include, but are not limited to: assisting with special waste profiling and waste management, providing transportation, storage, treatment, recycling, disposal, and/or reclamation of UTILITIES waste materials; and provision of specific logistics support including waste storage and transportation.
- (e) CONTRACTOR shall provide a complete updated list of all storage and disposal facilities which will be utilized under this Agreement.
- (f) CONTRACTOR shall not accept waste materials from UTILITIES other than those allowed by CONTRACTOR's permits, registrations, or licenses for transportation, storage, treatment, recycling, disposal, and/or reclamation.

5. Contracting Procedure. UTILITIES shall submit to CONTRACTOR a completed standard Waste Profile Sheet or Waste Product Questionnaire (Waste Profile Sheet) describing the waste materials to be transported, treated, stored, disposed of, recycled or reclaimed by CONTRACTOR and if requested by CONTRACTOR provide a representative sample of the waste materials. Submission of a completed Waste Profile Sheet shall constitute UTILITIES' request that CONTRACTOR accept for transportation, treatment, storage, disposal and/or recycling the waste materials described therein. CONTRACTOR offers no guarantee or commitment that it will accept any particular type of waste materials upon receipt of a Waste Profile Sheet submitted by UTILITIES.

6. Composition of Waste Materials. If CONTRACTOR determines that any waste materials provided by UTILITIES do not conform to the descriptions and specifications in the corresponding Profile Sheet or representative sample (Nonconforming Waste), UTILITIES shall, in good faith, attempt to amend the Profile Sheet and any other pertinent documents and/or correct any improper containerization, marking or labeling to

enable CONTRACTOR to accept such Nonconforming Waste. If the parties cannot, within a reasonable time after CONTRACTOR notifies UTILITIES that the waste materials constitute Nonconforming Waste, resolve the same as set forth above, CONTRACTOR may reject the same and UTILITIES shall make prompt arrangements for the removal of such Nonconforming Waste from the facility at which they are located to another lawful place of storage or disposal. CONTRACTOR shall be responsible for properly handling, storing, transporting, and safeguarding such Nonconforming Waste until such time as UTILITIES or its authorized agent takes possession of the Nonconforming Waste. Subject to Section 22, UTILITIES agrees to pay CONTRACTOR its reasonable expenses and charges incurred in handling, storing, safeguarding, and transporting UTILITIES' Nonconforming Waste.

7. Transportation; Transfer of Title to Waste Materials. Transportation of the waste materials to CONTRACTOR's facility shall be the responsibility and at expense of CONTRACTOR unless UTILITIES specifically agrees in writing with CONTRACTOR to retain responsibility for transportation of the waste materials, including for expenses associated therewith. CONTRACTOR shall comply with all applicable statutes, rules, regulations and ordinances of the United States and all applicable state and local regulations in moving, handling, transporting, disposing of and/or recycling the waste materials. CONTRACTOR shall be responsible for proper loading of the waste materials on vehicles provided or arranged for by CONTRACTOR unless UTILITIES and CONTRACTOR agree in writing for UTILITIES to be responsible for loading the materials onto CONTRACTOR's vehicles. Unless otherwise agreed to in writing by UTILITIES, CONTRACTOR shall be solely responsible for complying with all requirements mandated by Federal, State and local laws regarding the proper labeling, packaging, segregation, transportation, and disposal of UTILITIES' waste materials. The parties agree and understand that reasonable, justified refusal by drivers or other employees of CONTRACTOR or its subcontractors to load, handle, transport, dispose of and/or recycle Nonconforming Waste will not be considered a breach of this Agreement. CONTRACTOR shall take title to UTILITIES' waste materials which conform to the descriptions and specifications stated in the Profile Sheet and all responsibility and liability in connection therewith upon completion of loading of the waste materials into CONTRACTOR's transportation vehicles, or if transported by UTILITIES, upon delivery to CONTRACTOR's facility. Title to Nonconforming Waste shall at all times remain with UTILITIES.

8. Waste Manifest. CONTRACTOR shall prepare and maintain a Uniform Waste Manifest (UWM) documenting where the waste materials were generated and by whom, identifies the transporter, and the final destination. One copy of this UWM with signatures and dates shall be provided to a UTILITIES representative prior to the shipment of waste materials from UTILITIES' facilities. The final UWM shall be provided by CONTRACTOR to UTILITIES within thirty (30) calendar days of the actual pickup date.

9. Inspection of Facilities. UTILITIES shall have the right to inspect and perform environmental compliance audits of CONTRACTOR's facilities and procedures related

to the Services to ensure that UTILITIES' waste materials are properly transported, treated, stored, disposed of, recycled, and/or reclaimed and to ensure that those facilities by which UTILITIES waste materials are received are properly managed and operated in accordance with all applicable local, state, and federal, laws and regulations. UTILITIES shall work with CONTRACTOR to schedule such inspections so as not to unreasonably interfere with CONTRACTOR's business operations. UTILITIES inspection of CONTRACTOR's facilities shall not subject UTILITIES to liability for CONTRACTOR's violation or noncompliance with all applicable local, state, and federal, laws and regulations and does not constitute a waiver of any of CONTRACTOR's obligations under this Agreement.

10. Warranties.

(a) CONTRACTOR expressly represents and warrants that all Services furnished under this Agreement shall be completed in a professional, workmanlike manner, with the degree of skill and care that is required by current, good and sound professional procedures. Further, CONTRACTOR represents and warrants that: (i) CONTRACTOR is engaged in the business of performing services with respect to waste materials and has developed the requisite expertise to perform the Services agreed to by UTILITIES and CONTRACTOR hereunder; (ii) all CONTRACTOR vehicles and each facility utilized to perform Services hereunder shall have all permits, licenses, certificates or approvals required under applicable laws and regulations for such Services; (iii) CONTRACTOR will perform Services for UTILITIES, including but not limited to loading, moving, transporting, handling, storing, treating, disposing of, recycling and/or reclaiming of waste materials in a safe and workmanlike manner, and in compliance with all statutes, ordinances, laws, orders, rules and regulations applicable to the Services; and (iv) it has all necessary right, power and authority to enter into this Agreement. Inspection, testing, acceptance or use of the Services furnished hereunder shall not affect the CONTRACTOR's obligation under this warranty and such warranties shall survive inspection, testing, acceptance and use. If the UTILITIES' waste materials include hazardous materials, CONTRACTOR represents and warrants that CONTRACTOR understands the nature of any hazards associated with transporting, handling, transportation, storage, disposal, and recycling of such hazardous materials.

(b) CONTRACTOR's warranty shall run to UTILITIES, its successors, assigns and customers, and users of the Services. CONTRACTOR agrees to correct defects of any Services not conforming to the foregoing warranty promptly without expense to UTILITIES, when notified of such nonconformity by UTILITIES, provided UTILITIES elects to provide CONTRACTOR with the opportunity to do so. In the event of failure of CONTRACTOR to correct defects in nonconforming Services promptly, UTILITIES, after reasonable notice to CONTRACTOR, may make such corrections or hire a third party to make such corrections and charge CONTRACTOR for the cost incurred by UTILITIES in doing so.

(c) UTILITIES represents and warrants to CONTRACTOR that: (i) the description of and specifications pertaining to its waste materials in the Profile Sheet is and at all times will be true and correct in all material respects to the best of UTILITIES' knowledge, and waste materials tendered to CONTRACTOR will at all times, including, without limitation, at the time of recertification of the waste materials, conform to the description and specifications contained in the Profile Sheet or representative sample; (ii) UTILITIES has made available all information relevant to the Services it has regarding the waste materials; (iii) if applicable, UTILITIES has selected the packaging for the waste materials UTILITIES is responsible for shipping to CONTRACTOR and UTILITIES warrants that such packaging (a) is suitable for the waste materials contained therein, and (b) meets all legally applicable regulatory standards for shipping such waste materials; (iv) if UTILITIES is not the Generator of the waste materials (as defined in 40 CFR 260.10), UTILITIES has all necessary authority to enter into this Agreement with respect to the waste materials; (v) UTILITIES is under no legal restraint which prohibits the transfer of possession of such waste materials to CONTRACTOR; and (vi) UTILITIES shall comply with all applicable statutes, ordinances, laws, orders, rules and regulations related to the Services.

11. Invoicing/Payment. Payment of undisputed invoices at the prices stipulated herein is due and payable Net Thirty (30) Days from UTILITIES' receipt of a complete and accurate invoice for Services accepted by UTILITIES. Each invoice shall be accompanied by supporting documentation as required by UTILITIES. Payment by credit card, "P-card," or electronic funds transfer is a means of remitting payment only and shall not be construed as limiting Utilities' rights or altering any of the terms or conditions incorporated into this Agreement. Original invoices for payment shall be submitted and addressed to Accounts Payable - MC 929, Colorado Springs Utilities, PO Box 1103, Colorado Springs, Colorado 80947-0929; Email at [accountspayablemail@csu.org](mailto:accountspayablemail@csu.org); Fax at 719-668-8600. Unless otherwise stated in this Contract, a copy of each invoice, duly marked "COPY", shall be sent directly to the project manager or Agreement administrator as identified in this Agreement and as otherwise advised in writing.

12. Late Payment. UTILITIES is committed to paying invoices within the terms of the Agreement. UTILITIES will not pay any late charges or service charges that may be incurred due to late payment.

13. Taxes. UTILITIES is an enterprise of the city of Colorado Springs and is exempt from taxes as follow:

- (a) **FEDERAL: 84-6000574**
- (b) **FEDERAL EXCISE: 138557**
- (c) **STATE SALES TAX: 98-03479**

14. Confidentiality.

(a) CONTRACTOR acknowledges that UTILITIES is a public entity subject to the provisions of the Colorado Public Records Act. CONTRACTOR acknowledges that it has been or may be exposed to confidential or proprietary information, oral or written, ("Confidential Information"), including, but not limited to, customer information, financial and business information (including, without limitation, revenues, expenses, taxes and contracts), partner relationships, patents, trade secrets, technical processes, formulae related to products and services, pricing and any device, technique or compilation of information used in UTILITIES business. CONTRACTOR agrees that it shall not use, commercialize or disclose such Confidential Information to any person or entity, except to its own employees having a "need to know." CONTRACTOR may only disclose Confidential Information to third parties upon prior written approval by UTILITIES, and shall comply with UTILITIES approval in making such disclosure. CONTRACTOR shall use at least the same degree of care in safeguarding Confidential Information as it uses in safeguarding its own confidential information, but in no event less than reasonable care. Nothing is intended to or shall grant CONTRACTOR an ownership right, a license or other right of any nature to use Confidential Information except as expressly provided herein.

(b) The recipient shall hold such information confidential to the extent provided by law and shall not engage in any use or disclosure of such information not expressly provided for in this Agreement. In the event either party receives a request for such confidential and/or proprietary information from a third party, notice thereof shall promptly be given to the other party. The recipient shall take all reasonable steps to prevent any unauthorized possession, use, transfer or disclosure of such confidential information. Should the recipient learn of any such unauthorized possession, use, transfer or disclosure, it shall promptly notify the other party. If requested, the recipient shall deliver to the other party all confidential information (including all copies) disclosed to it with respect to this Contract.

(c) The disclosure provisions of this section shall not apply to information that a) the parties had in their possession prior to disclosure by the other party; b) becomes public knowledge through no fault of CONTRACTOR; c) the recipient lawfully acquires from a third party not under an obligation of confidentiality to the disclosing party; or d) is required to be disclosed by law or court order.

(d) CONTRACTOR shall not disclose any such confidential information or documents to any third party without the prior written authorization of UTILITIES.

15. Independent Contractor. CONTRACTOR understands and agrees that CONTRACTOR and CONTRACTOR's employees, agents, subcontractors or other personnel are not UTILITIES' employees. CONTRACTOR shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation or benefits to CONTRACTOR or any of CONTRACTOR's employees, agents, subcontractors or other personnel performing, directly or indirectly, the Services specified herein. Further, it is expressly understood and agreed that neither CONTRACTOR nor CONTRACTOR's employees, agents, subcontractors or other personnel shall be entitled to any UTILITIES' payroll, insurance, unemployment, Worker's Compensation, retirement or any other benefits whatsoever.

16. Indemnification. To the fullest extent permitted by law, CONTRACTOR shall release, defend and hold harmless UTILITIES, the City of Colorado Springs, their officers, City Council, Utilities Board, directors, employees, agents and representatives from and against any and all losses, damages (including attorney's fees, expert fees, and all litigation expenses), injuries, claims, cause or causes of action, or any liability of any kind whatsoever resulting from, or arising out of, or in connection with the Services provided by CONTRACTOR pursuant to this Contract, including, without limitation, (i) any claim based on the death or bodily injury to any person, destruction or damage to property, or contamination of the environment and any associated clean up costs, (ii) any claim based on the negligence, omissions or willful misconduct of CONTRACTOR or any of its employees, consultants or agents, and (iii) any claim by a third party against UTILITIES alleging that the Services, the results of such Services, or any other products or processes provided under this Contract, infringe a patent, copyright, trademark, trade secret or other proprietary right of a third party.

17. Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING OUT OF LOSS OF PROFITS OR REVENUE, LOSS OF USE, LOSS OF OPPORTUNITY, LOSS OF GOODWILL, COST OF SUBSTITUTE FACILITIES, OR GOODS OR SERVICES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY IN THE FOLLOWING INSTANCES: (I) LIABILITY ARISING UNDER INDEMNIFICATION OBLIGATIONS; AND/OR (II) DAMAGES INCURRED DUE TO INTENTIONAL OR NEGLIGENT ACTS; AND/OR (III) DAMAGES INCURRED DUE TO ABANDONMENT, REPUDIATION AND/OR DELIBERATE BREACH OF OBLIGATIONS HEREUNDER; AND/OR (IV) A LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE; AND/OR (V) DAMAGES INCURRED DUE TO PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE. UTILITIES liability on any claim of any kind for any loss or damage arising out of, in connection with or resulting from this Agreement or from the performance or breach thereof shall in no case exceed the price allocable to the Services which gives rise to the claim. UTILITIES shall not be liable for penalties of any kind. Any action resulting from any breach on the part of UTILITIES as to the Services hereunder must be commenced within one (1) year after the cause of action has accrued. Nothing in this Agreement shall be interpreted to limit or prevent the protections afforded



to UTILITIES under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

18. Insurance/Bonds. CONTRACTOR agrees to maintain at its own expense all legally required insurance for its premises, associates, and employees. CONTRACTOR shall maintain the following insurance with limits not less than as follows: Workers' Compensation in accordance with the requirements of the State of Colorado and Employer's liability insurance of not less than \$500,000 per occurrence; Commercial General Liability insurance with a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage; Automobile Liability insurance including owned and hired vehicles with a combined single limit of \$500,000 per occurrence for bodily injury and property damage insurance with a combined single limit of \$500,000 per occurrence; and excess liability of \$1,000,000 combined single limit per occurrence. Upon request, CONTRACTOR shall provide UTILITIES with certificates of insurance. In the event the amounts due under this Agreement exceed One Hundred Thousand Dollars (\$100,000), and upon request by UTILITIES, CONTRACTOR shall furnish performance, payment and/or maintenance bonds acceptable to UTILITIES, each in an amount at least equal to the price of the Contract, as security for the faithful performance of CONTRACTOR's obligations under the Contract.

19. Changes. UTILITIES may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Agreement in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance or point of delivery; and (iv) delivery schedule. Subject to Section 22 "Appropriation of Funds", if any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, UTILITIES may agree to an equitable adjustment in the Agreement price and/or delivery schedule, and the Agreement will be modified accordingly upon mutual written agreement by authorized representatives of the parties. Any claim for an equitable adjustment by CONTRACTOR must be submitted in writing to UTILITIES within thirty (30) days from the date of notice of the change, unless the parties agree in writing to a longer period. Failure to agree to any adjustment shall be resolved in accordance with Section 21 "Dispute Resolution". However, nothing contained in this provision shall excuse CONTRACTOR from proceeding without delay in the performance of this Agreement as changed.

20. Force Majeure. Neither party shall be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition beyond its reasonable control without fault or negligence including strikes, riots, wars, floods, fires, explosions, acts of nature, acts of government, or labor disturbances.

21. Dispute Resolution. If a dispute arises between the parties relating to this Contract, the following procedure shall be followed:



(a) The parties shall hold a meeting promptly, but in no event later than thirty (30) calendar days from the initial written notice of the dispute, attended by persons with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute; provided, however, that no such meeting shall be deemed to vitiate or reduce the obligations and liabilities of the parties thereunder or be deemed a waiver by a party hereto of any remedies to which such party would otherwise be entitled thereunder unless otherwise agreed to by the parties in writing.

(b) If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to non-binding mediation and to bear equally the costs of the mediation.

(c) The parties will jointly appoint a mutually acceptable mediator. If they fail to do so within twenty (20) calendar days from the conclusion of the negotiation period, they shall each select a mediator. The two mediators will then appoint a third mediator who shall, as the sole mediator, conduct mediation for the parties.

The parties agree to participate in good faith in the mediation and negotiations related thereto for a period of thirty (30) calendar days. The substantive and procedural law of the State of Colorado shall apply to the proceedings. If the parties are not successful in resolving the dispute through mediation, then the parties shall be free to litigate the matter.

22. Appropriation of Funds. In accord with the City Charter, performance of UTILITIES obligations under this Agreement are expressly subject to appropriation of funds by the City Council or Utilities Board. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of UTILITIES obligations under this Contract, or appropriated funds may not be expended due to City Charter spending limitations, then this Agreement shall thereafter become null and void by operation of law, and UTILITIES shall thereafter have no liability for compensation or damages to CONTRACTOR in excess of UTILITIES authorized appropriation for this Agreement or the applicable spending limit, whichever is less. UTILITIES shall notify CONTRACTOR as soon as reasonably possible in the event of non-appropriation or in the event a spending limitation becomes applicable. The funds appropriated for this Agreement are equal to or exceed the Agreement amount for the year in which this Agreement was awarded. For Services to be completed in subsequent fiscal years, if any, UTILITIES will notify CONTRACTOR of the non-appropriation of funds for such Services after the adoption of UTILITIES annual appropriation ordinance for those years. CONTRACTOR and UTILITIES agree and acknowledge as a part of this Contract, that no change order or other form or order or directive may be issued by UTILITIES which requires additional compensable Services to be performed, which Services causes the aggregate amount payable under the Agreement to exceed the amount appropriated for this Agreement as listed above, unless CONTRACTOR has been given a written assurance by UTILITIES that lawful appropriations to cover the cost of the additional

Services have been made or unless such Services is covered under a remedy-granting provision in this Contract.

23. Termination for Cause. In the event CONTRACTOR fails to perform any term or condition hereof ("Default") and the Default continues for a period of seven (7) days after UTILITIES shall have given CONTRACTOR written notice thereof, then UTILITIES may, at its option, terminate this Agreement or any part hereof for cause. In the event that this Agreement is terminated in accordance with the foregoing, UTILITIES may require CONTRACTOR to complete Services initiated prior to CONTRACTOR's receipt of notice of termination or may take possession of any Services and may complete any Services by whatever means UTILITIES may select. If such Services are not completed by CONTRACTOR, the cost of completing said Services shall be deducted from the balance which would have been due to CONTRACTOR had the Agreement not been terminated and Services completed in accordance with the Agreement. In the event UTILITIES decides to complete such Services, CONTRACTOR shall be responsible for properly handling, storing, safeguarding, and transporting any waste materials until such time as UTILITIES or its authorized agent takes possession of the waste materials. CONTRACTOR may terminate this Agreement upon written notice to UTILITIES if UTILITIES fails to pay CONTRACTOR within sixty (60) days after CONTRACTOR notifies UTILITIES that payment is past due.

24. Termination for Convenience. UTILITIES reserves the right to terminate this Agreement or any part hereof for its sole convenience. In the event of such termination, CONTRACTOR shall immediately stop all Services hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such Services. CONTRACTOR shall be paid a reasonable termination charge consisting of a percentage of the Agreement price reflecting the percentage of the Services completed and accepted by UTILITIES prior to the effective date of termination, plus actual and reasonable direct costs resulting from termination, which shall not include loss of anticipated profits or revenue. CONTRACTOR shall not be paid for any Services initiated after receipt of the notice of termination, or for any costs incurred for work initiated after receipt of notice of termination by CONTRACTOR's suppliers or subcontractors which CONTRACTOR could reasonably have avoided.

25. Non-Discrimination. UTILITIES is committed to equal employment opportunity for all and maintains and implements equal opportunity and affirmative action where necessary in all of its daily operations. UTILITIES' policy is that no person shall be discriminated against because of race, color, national origin or ancestry, sex, age, religious convictions, veteran status, disability or political beliefs. CONTRACTOR shall comply with all Federal and State nondiscrimination laws and have an equal employment opportunity policy. CONTRACTOR shall also comply with UTILITIES' Equal Employment Opportunity Affirmative Action policies regarding nondiscrimination and harassment, which includes sexual harassment, in the conduct of its business while on UTILITIES' property and/or interacting with UTILITIES employees. CONTRACTOR will cooperate with UTILITIES in using CONTRACTOR's best efforts to ensure that

disadvantaged business enterprises are afforded the full opportunity to compete for subcontracts or Services under this Contract.

26. Audit. CONTRACTOR shall maintain accurate documents, papers and records of all amounts billable to and payments made by UTILITIES hereunder and related to the Services in accordance with recognized accounting practices, and as required by Laws and Regulations, and in a format that will permit audit, for a period of three (3) years after payment of the last invoice related to this Agreement or resolution of claim, whichever is later. Such records shall be open to reasonable inspection and subject to audit and/or reproduction, during normal working hours, by UTILITIES or its authorized representative.

27. Severability. Any provision or part of this Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties who agree that the Agreement shall be reformed to replace such stricken provision with a new provision that comes as close as possible to expressing the intention of the stricken provision.

28. Assignment. Neither party may assign or transfer any part of this Agreement without the written consent of the other party, except to an affiliate but only if (a) the assignee agrees in writing to be bound by the terms of this Agreement and (b) the assigning party remains liable for obligations under the Agreement. Any other attempt to transfer or assign is void. Upon a change of control (for example, through a stock purchase or sale, merger, or other form of corporate transaction), (a) the party experiencing the change of control will provide written notice to the other party within 30 days after the change of control, and (b) the other party may immediately terminate this Agreement any time between the change of control and 30 days after it receives the written notice in subsection (a). Neither party may assign or transfer any part of this Agreement without the written consent of the other party, except to an affiliate but only if (a) the assignee agrees in writing to be bound by the terms of this Agreement and (b) the assigning party remains liable for obligations under the Agreement. Any other attempt to transfer or assign is void.

29. Compliances. In performing or providing the Services hereunder, CONTRACTOR shall comply with all laws and regulations as well as technical standards or specifications issued by UTILITIES. CONTRACTOR must qualify for and obtain any required licenses and permits prior to commencing Services.

30. Compliance with C.R.S. Sec. 8-17.5.101. Pursuant to Colorado Revised Statutes Section 8-17.5-101, CONTRACTOR certifies that CONTRACTOR shall comply with the provisions of C.R.S. Sec. 8-17.5-101 *et seq.* CONTRACTOR shall not knowingly employ or contract with an illegal alien to perform Services under this Agreement or enter into a contract with a subcontractor that fails to certify to CONTRACTOR that the subcontractor shall not knowingly employ or contract with an illegal alien to perform

Services under this Agreement. CONTRACTOR represents, warrants, and agrees that it (i) has confirmed that it does not employ any illegal aliens, *either* through participation in the *eVerify* program administered by the Social Security Administration and Department of Homeland Security *or by means of the Colorado Department of Labor program*, and (ii) otherwise will comply with the requirements of C.R.S. Sec. 8-17.5-102(2)(b). CONTRACTOR shall comply with all reasonable requests made in the course of an investigation under C.R.S. Sec. 8-17.5-102 by the Colorado Department of Labor and Employment. If CONTRACTOR fails to comply with any requirement of this provision or C.R.S. Sec. 8-17.5-101 *et seq.*, UTILITIES may terminate this Agreement for breach.

31. Notice. Any notice which may or must be given pursuant to this Agreement shall be made in writing and delivered to all parties hereto at the following address by certified mail return receipt requested. Notice shall be deemed given when delivered:

To UTILITIES:

COLORADO SPRINGS UTILITIES

Attn: Procurement and Contract Services Manager  
PO Box 1103, MC 920  
Colorado Springs, Colorado 80947-0920  
Phone: 719-668-3862

To CONTRACTOR:

CONTRACTOR

Attn:  
Address  
City, State Zip Code  
Phone: xxx-xxx-xxxx

32. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Colorado without reference to conflicts of laws, the Colorado Springs City Charter, City Code, Ordinances, Rules and Regulations. In the event of litigation, this Agreement shall be enforceable by or against the City of Colorado Springs on behalf of UTILITIES as provided in Colorado Springs City Code § 12.1.108. In the event of any dispute over the Contract's terms and conditions, the exclusive venue and jurisdiction for any litigation arising thereunder shall be in the District Court of El Paso County, Colorado, and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.

33. Survival of Obligations. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Agreement will survive the payment, completion, and acceptance of the Services or termination or completion of the Contract.

34. Setoff. All claims for money due or to become due from UTILITIES shall be subject to deduction or setoff by UTILITIES by reason of any counterclaim arising out of this or any other transaction with CONTRACTOR.

35. No Publicity. CONTRACTOR shall not advertise or promote using the name or description of UTILITIES, without prior written consent of UTILITIES.

36. Price Warranty. CONTRACTOR warrants that the prices and rates stated herein represent currently established prices and rates and are no higher than would be charged to any other customer, whether commercial or a United States agency of local, state or federal government, for similar services in like quantities.

37. Waiver. UTILITIES' failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or UTILITIES' waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

38. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all previous written or oral communications, understandings, and agreements between the parties unless specifically stated herein. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any acknowledgement or other document submitted by CONTRACTOR. This Agreement may only be amended by a written agreement signed by both parties. Email and all other electronic (including voice) communications from UTILITIES in connection with this Agreement are for informational purposes only. No such communication is intended by UTILITIES to constitute either an electronic record or an electronic signature, or to constitute any agreement by UTILITIES to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.

THIS AGREEMENT is executed by the parties on the date and year set forth above.

COLORADO SPRINGS UTILITIES

CONTRACTOR

By: Kim Cross  
Name: Kelly J. Valdez  
Title: Principal Contracting Agent  
Sr. Contracting Agent 1/19/2011  
City Attorney's Office - Utilities Division

By: James E. Hill  
Name: \_\_\_\_\_  
Title: OPS MGR

Approved As To Form:

☒ Signatures in CDB

By: \_\_\_\_\_

Name: Michael Gustafson

Title: Attorney

Date: \_\_\_\_\_

# **STATEMENT OF WORK (SOW)**

## **For Hazardous and Universal Waste Transportation and Disposal Services**

### **1.0 Introduction**

Colorado Springs Utilities (UTILITIES) requires service to provide environmentally responsible and reliable transportation and disposal of hazardous Waste and Universal Waste on an as needed basis. The range and extent of services will vary depending on the project and UTILITIES needs. No specific amount of work is guaranteed. UTILITIES reserves the right to utilize other contracts to provide the services.

### **2.0 Background**

Through its many operations, UTILITIES generates a variety of hazardous wastes and universal wastes. These wastes must be transported to off-site, privately owned, and operated facilities for disposal.

UTILITIES conducts environmental compliance audits of contracted off-site waste disposal facilities to ensure that wastes generated by UTILITIES are properly disposed and those facilities to which the wastes are received are properly managed and operate in accordance with applicable state and federal environmental regulations.

Knowledge of SELLER's environmental compliance status can aid UTILITIES in assessing potential liabilities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund") from an improperly managed facility and determining whether to continue to use a particular facility.

### **3.0 Scope and Responsibility**

SELLER shall have the proper permits required by federal, state, and local agencies for the disposal of wastes generated by various UTILITIES facilities.

SELLER shall provide reliable, cost-effective transportation and waste disposal. The SELLER shall furnish all labor, equipment, materials, supplies, tools, supervision, and all other items incidental thereto and perform all services necessary and specified in the prescribed manner to provide services for disposal of waste to UTILITIES. The services, include, but are not limited to:

- (1) SELLER shall assist with waste profiling and waste management, providing transportation, as appropriate, and disposal services waste;
- (2) SELLER shall have the ability to provide specific logistics support including waste storage and transportation;
- (3) SELLER shall be knowledgeable and experienced in waste collection systems, planning, regulatory compliance, and permitting relating to the management and disposal of waste;

#### **3.1 Schedule**

UTILITIES reserves the right to change pickup days and pickup frequency in order to meet the needs of UTILITIES on an as needed basis.



**STATEMENT OF WORK (SOW)**  
**For Hazardous and Universal Waste Transportation and**  
**Disposal Services**

## **4.0 Definitions**

"Facility" means a storage, treatment and/or disposal facility approved by Contractor, and which is permitted to accept waste materials under applicable laws and regulations.

"Profile Sheet" means a standard Contractor Generator's Waste Profile Sheet (as defined in 40CFR260.10) executed by Customer or Generator.

**COLORADO SPRINGS UTILITIES**  
**Exhibit B Pricing**  
**Hazardous and Universal Waste Transportation and Disposal Services**

**1. Contract Pricing – Unit Pricing**

Unit pricing for recycling services is contained on the following pages.

## Mercury Containing Lamps

PRODUCT	DESCRIPTION	UNIT PRICE	CONTAINER MIN
LP-BIAXL	Recycle - Bi-axial Lamp	\$1.0500	Lamp
LP-F	Recycle - Fluorescent Lamps	\$0.0700	Linear Feet
LP-FCIRC	Recycle - Circular Fluorescent Lamps	\$0.4500	Lamp
LP-FCHP01	Recycle - Compact Fluorescent Lamps	\$0.4500	Lamp
LP-FDM	Recycle - Crushed Fluorescent Lamps (Drummed)	\$0.6500	Pound
LP-FDM	Recycle - Crushed Fluorescent Lamps (Drummed)	\$0.6500	Pound
LP-FDM	Recycle - Crushed Fluorescent Lamps (Drummed)	\$0.6500	Pound
LP-FDM	Recycle - Crushed Fluorescent Lamps (Drummed)	\$0.6500	Pound
LP-FIX01	Recycle - Light Fixtures	\$10.5000	Each
LP-FSS	Recycle - Shielded Fluorescent Lamps	\$1.0500	Lamp
LP-FUT	Recycle - U-Tube Lamps	\$0.4500	Lamp
LP-FUV	Recycle - UV Fluorescent Lamps	\$1.2500	Lamp
LP-H01	Recycle - HID Lamps	\$0.9900	Lamp
LP-HALO	Recycle - Halogen Lamp	\$0.2100	Lamp
LP-HCATH	Recycle - Hollow Cathode Lamp	\$1.9500	Lamp
LP-HIDFIX	Recycle - HID Light Fixtures	\$7.3500	Each
LP-I	Recycle - Incandescent Lamps	\$0.2000	Lamp
LP-IBRKN	Recycle - Broken Fluorescent Lamps	\$0.6500	Pound
LP-IBRKN	Recycle - Broken Fluorescent Lamps	\$0.6500	Pound
LP-IBRKN	Recycle - Broken Fluorescent Lamps	\$0.6500	Pound
LP-IFL	Recycle - Flood Lamps	\$0.2100	Lamp
LP-MH01	Recycle - Metal Halide Lamps	\$0.9900	Lamp
LP-MISC	Recycle - Miscellaneous Specialty Lamps	\$2.7500	Lamp
LP-MV01	Recycle - Mercury Vapor Lamps	\$0.9900	Lamp
LP-MVHP	Recycle - Super High-Pressure Mercury Vapor	\$0.9900	Lamp
LP-NEON	Recycle - Neon Lamps	\$4.0000	Pound
LP-SHP	Recycle - High Pressure Sodium Lamps	\$0.9900	Lamp
LP-X	Recycle - Xenon Arc Lamps	\$0.9900	Lamp
LP-SLP	Recycle - Low Pressure Sodium Lamps	\$0.9900	Lamp

## Non-PCB and PCB Ballasts

PRODUCT	DESCRIPTION	UNIT PRICE	CONTAINER MIN
BL-NPCB-RE	Recycle - Non-PCB Lamp Ballasts	\$0.2000	Pound
BL-PCB-IN	Incineration - PCB Ballast	\$0.7000	Pound
BL-PCB-LF	Landfill - PCB Ballast	\$0.3000	Pound

## Industrial and Consumer Batteries

PRODUCT	DESCRIPTION	UNIT PRICE	CONTAINER MIN
BT-ALA	Recycle - Absolyte Lead Acid Batteries	\$0.4400	Pound
BT-ALK-RE	Recycle - Alkaline Batteries	\$0.6000	Pound
BT-CARZINC	Recycle - Carbon Zinc Batteries	\$0.6000	Pound
BT-CARZINCNG	Recycle - Carbon Zinc Batteries w/Mercury	\$6.0000	Pound
BT-LA DRY	Recycle - Lead Acid Batteries - Sealed	\$0.2500	Pound
BT-LA WET	Recycle - Lead Acid Wet Batteries	\$0.2500	Pound
BT-LIMNOX	Recycle - Lithium Manganese Dioxide Batteries	\$4.9500	Pound
BT-LIMP	Recycle - Lithium Metal Polymer Battery	\$4.9500	Pound
BT-LISOX	Recycle - Lithium Sulfur Dioxide Batteries	\$4.9500	Pound
BT-LITH-RE	Recycle - Lithium Batteries	\$4.9500	Pound
BT-LITHCL	Recycle - Lithium Thionyl Chloride Batteries	\$4.9500	Pound
BT-LITHON	Recycle - Lithium Ion Batteries	\$0.2500	Pound
BT-MAG	Recycle - Magnesium Batteries	\$0.9500	Pound
BT-MIXED	Recycle - Mixed Batteries	\$5.0000	Pound
BT-NICAD	Recycle - Nickel Cadmium Batteries	\$0.2500	Pound

PRODUCT	DESCRIPTION	UNIT PRICE	CONTAINER MIN
BT-NICAD-WET	Recycle - Wet Cell Nickel Cadmium Batteries	\$0.4500 Pound	15
BT-NIIR	Recycle - Nickel Iron Batteries	\$0.2500 Pound	25
BT-NIMET	Recycle - Nickel Metal Hydride Batteries	\$0.1500 Pound	25
BT-PBCA	Recycle - Lead Calcium Batteries	\$0.9500 Pound	15
BT-SILOX	Recycle - Silver Oxide Batteries	\$6.0000 Pound	25

## Computer/CPU/CRT Equipment

PRODUCT	DESCRIPTION	UNIT PRICE	CONTAINER MIN
EL-CMP-02	Recycle - Monitors	\$0.4000 Pound	
EL-CMP-03	Recycle - Televisions	\$0.4000 Pound	
EL-CMP-48	Recycle - Unsorted Electronic Equipment w/Monitors	\$0.4000 Pound	
EL-CMP-49	Recycle - Unsorted Electronic Equipment w/o Monitors	\$0.3500 Pound	

## Mercury Containing Articles &amp; Apparatus

PRODUCT	DESCRIPTION	UNIT PRICE	CONTAINER MIN
MC-AMALG	Recycle - Dental Amalgam	\$3.0000 Pound	100
MC-BATT	Recycle - Mercury Batteries	\$3.0000 Pound	100
MC-COMP	Recycle - Mercury Compounds	\$200.0000 Drum	5 DM
MC-COMP	Recycle - Mercury Compounds	\$100.0000 Drum	2 DM
MC-COMP	Recycle - Mercury Compounds	\$660.0000 Drum	30 DM
MC-COMP	Recycle - Mercury Compounds	\$495.0000 Drum	20 DM
MC-COMP	Recycle - Mercury Compounds	\$990.0000 Drum	55 DM
MC-COMP	Recycle - Mercury Compounds	\$385.0000 Drum	10 DM
MC-COMP	Recycle - Mercury Compounds	\$470.0000 Drum	15 DM
MC-DE-RE	Recycle/Retort - Mercury Contaminated Debris	\$100.0000 Drum	2 DM
MC-DE-RE	Recycle/Retort - Mercury Contaminated Debris	\$200.0000 Drum	5 DM
MC-DE-RE	Recycle/Retort - Mercury Contaminated Debris	\$470.0000 Drum	15 DM
MC-DE-RE	Recycle/Retort - Mercury Contaminated Debris	\$990.0000 Drum	55 DM
MC-DE-RE	Recycle/Retort - Mercury Contaminated Debris	\$660.0000 Drum	30 DM
MC-DE-RE	Recycle/Retort - Mercury Contaminated Debris	\$495.0000 Drum	20 DM
MC-DE-RE	Recycle/Retort - Mercury Contaminated Debris	\$385.0000 Drum	10 DM
MC-HG	Recycle - Mercury	\$2.9000 Pound	100
MC-MA	Recycle - Mercury Containing Articles	\$470.0000 Drum	15 DM
MC-MA	Recycle - Mercury Containing Articles	\$2,835.0000 Cubic Yards	2000 CF
MC-MA	Recycle - Mercury Containing Articles	\$185.0000 Drum	10 DM
MC-MA	Recycle - Mercury Containing Articles	\$200.0000 Drum	5 DM
MC-MA	Recycle - Mercury Containing Articles	\$495.0000 Drum	20 DM
MC-MA	Recycle - Mercury Containing Articles	\$990.0000 Drum	55 DM
MC-MA	Recycle - Mercury Containing Articles	\$100.0000 Drum	2 DM
MC-MA	Recycle - Mercury Containing Articles	\$660.0000 Drum	30 DM
MC-PD	Recycle - Phosphorus Powder	\$600.0000 Drum	55 DM

## Non-PCB &amp; PCB Capacitors

PRODUCT	DESCRIPTION	UNIT PRICE	CONTAINER MIN
CP-LG-NONPCB-RE	Recycle - Large Non-PCB Capacitors	\$0.5000 Pound	25
CP-LG-PCB-IN	Incineration - Large PCB Capacitors	\$1.2500 Pound	50
CP-SM-NONPCB-IN	Incineration - Small Non-PCB Capacitors	\$1.2500 Pound	50
CP-SM-PCB-IN	Incineration - Small PCB Capacitors	\$1.2500 Pound	50

## PCB &gt;500 Power Distribution Equipment

PRODUCT	DESCRIPTION	UNIT PRICE	CONTAINER MIN
PCB-DB-IN499	Incineration - PCB Shreddable Debris >499 PPM	\$0.9000 Pound	100
PCB-EQ-DR499	Recycle/Incineration/Landfill - Drained Equipment, >499 PPM	\$0.5000 Pound	50
PCB-EQ499	Plus Incineration/Landfill - PCB Oil Filled Equipment, >499 PPM	\$0.6600 Pound	50
PCB-OIL-499	Incineration - PCB Oil, >499 PPM	\$250.0000 Drum	

## PCB 50-499 Power Distribution Equipment

PRODUCT	DESCRIPTION	UNIT PRICE	CONTAINER MIN
PCB-DB-IN50	Incineration - PCB Shreddable Debris, 50-499 PPM	\$0.9000 Pound	100
PCB-EQ-DR-50	Recycle/Incineration/Landfill - Drained Equipment, 50-499 PPM	\$0.1800 Pound	50
PCB-EQ-TEST	PCB Equipment needing testing	\$125.0000 Each	
PCB-EQ50	Recycle/Incineration/Landfill - PCB Oil Filled Equipment, 50-499 PPM	\$0.3200 Pound	50
PCB-OIL-50	Incineration - PCB Oil, 50-499 PPM	\$200.0000 Drum	
PCB-WT	Incineration - PCB Water	\$350.0000 Drum	

### Non-PCB Power Distribution Equipment

PRODUCT	DESCRIPTION	UNIT PRICE		CONTAINER MIN
NON-EQ	Recycle/Incineration/Landfill - Non PCB Equipment	\$0.1400	Pound	25
NON EQ DR	Recycle/Incineration/Landfill - Non-PCB Drained Equipment	\$0.0600	Pound	25
NON-NONPCB-WT	Incineration - Non-PCB Water	\$315.0000	Drum	
NON-OIL DC	Dechlorination - Non PCB Oil, 2-49 PPM	\$125.0000	Drum	
NON-OIL IM	Incineration - Non PCB Oil	\$200.0000	Drum	

### Packaging Materials & Supplies

PRODUCT	DESCRIPTION	UNIT PRICE		CONTAINER MIN
SUPPLY-001	Supply -140 Fiber Lamp Drum - Four Foot	\$30.0000	Each	
SUPPLY-002	Supply 4' Lamp Box	\$3.0000	Each	
SUPPLY-003	Supply 8' Lamp Box	\$4.0000	Each	
SUPPLY-005	Supply U-Tube Box	\$2.5000	Each	
SUPPLY-006	Supply 55 Gallon Metal Open Top Drum	\$35.0000	Each	
SUPPLY-019	Supply 85 gal. Metal Overpack Drum	\$175.0000	Each	
SUPPLY-020	Supply 5 gal. Poly Carboy	12.0000	Each	
SUPPLY-036	Supply 4' Fiber Drum/ 85-Count	\$20.0000	Each	

### Transportation Charges

PRODUCT	DESCRIPTION	UNIT PRICE		CONTAINER MIN
DEMURRAGE	Demurrage - Transportation	\$75.0000	Per Hour	
STOPFEE	Multiple Stops Per Service Request	100.0000	Each	
TRANS-CALLOUT	LTL Callout Charge	\$150.0000	Each	
TRANS-DEL	Delivery of Supplies	\$75.0000	Load	
TRANS-DRUM	Per Drum Transport Rate	\$50.0000	Each	
TRANS-PALLET	Per Pallet Transport Rate	\$100.0000	Each	

### Energy and Security Surcharge

PRODUCT	DESCRIPTION	UNIT PRICE		CONTAINER MIN
TRANS-FUEL13	13% Energy and Security Surcharge	\$0.1300	Percent	

### Labor Charges

PRODUCT	DESCRIPTION	UNIT PRICE		CONTAINER MIN
LABOR	Labor	\$85.0000	Per Hour	